committee of inspection has granted such authority. Section 236(1)(e) of the Companies Act clearly lays down such a requirement and when challenged, proof must be tendered that such authority does exist and one cannot just by a mere wave of the hand dismiss it as an internal arrangement.

As for s. 236(2) of the Companies Act which involves various activities of the liquidator in carrying out his duties to wind-up the affairs of the company and distribute its assets, the Court shall as provided by s. 236(3) of the Companies Act have only a control over such matters. "Control" unlike "authority" as stated in s. 236(1) of the Companies Act is that it (the liquidator) can commence actions but subject to the approval of the Court. As for "authority", one cannot even begin to commence unless authority or permission is granted. As for this contention, I find that the acts of the liquidator in bringing this motion to Court is not void under s. 236(2) & (3) of the Companies Act but, the appointment of Ong Ban Chai as an Advocate to assist the liquidator is.

Based on the reasons stated aforesaid, I dismissed the liquidator's motion with costs.

COCOA MERCHANT LIMITED

v.

K. J. JAYARAMAN

HIGH COURT, PULAU PINANG
DATO' ABDUL HAMID BIN HJ. MOHAMED J.
[CIVIL SUIT NO. 24-60-85 & 24-307-85]
7 MAY 1992

PRACTICE & PROCEDURE: Application to cross-examine deponent of affidavit - Deponent plaintiff's solicitor - Delay in making application - Whether application should be allowed - Defendant filing further affidavit - Whether further affidavit should be admitted - Admission of fresh evidence - Discretion of Court.

The defendant applied to dismiss the plaintiff's action for want of prosecution, which application was dismissed. The defendant applied for further argument and applied to cross-examine the solicitor for the plaintiff who had sworn affidavits on behalf of the plaintiff.The plaintiff raised objection to the defendant's application and further objected to the inclusion of the defendant's affidavit filed after decision on the application to dismiss for want of prosecution was given but before the hearing of further argument.

Held:

[1] Whilst the practice of solicitors themselves filing contentious affidavits should be discouraged, the fact that it is done is not a ground for cross-examining the solicitor. Whether a deponent should be cross-examined or not depends on the contents of the affidavit and not on who the deponent is.

[2] The application was made too late in the day. The affidavits in question were referred to in the course of argument in chambers. To allow the defendant to cross-examine now would amount to allowing the defendant to adduce fresh oral evidence before the hearing of further argument.

[3] The admission of fresh evidence or new affidavit at the further argument stage is discretionary and the circumstances in which fresh evidence can be admitted on appeal are applicable in admitting fresh evidence at further argument stage.

[*Plaintiff's application dismissed. Defendant's preliminary objection upheld*].

[Editorial Note: The defendant has appealed to the Supreme Court vide Appeal Nos. MARS 02-224-92 & MARS 02-223-92].

Cases referred to:
Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon [1989] 1 CLJ 181 ***(refd)***
Seng Huat Hang Sdn. Bhd. v. Chee Seng & Co. Sdn. Bhd. [1985] 2 CLJ 97 ***(refd)***
United Asian Bank Berhad v. Bhassie [1991] 1 CLJ 827/[1991] 2 MLJ 122 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 41 r. 8

For the plaintiff - K. Anantham; M/s. Skrine & Co.
For the defendant - R. Rajasingam; M/s. Jayaraman Ong & Co.

JUDGMENT

Abdul Hamid Bin Hj. Mohamed J:
In this judgment I shall be referring to the enclosures in Civil Suit No. 24-60-85. However whatever I say is also applicable to Civil Suit No. 24-307-85 since the applications in both suits are identical, heard together and decided together.

By a summon-in-chambers, the defendant applied, *inter alia,* for an order that the action be dismissed for want of prosecution. I dismissed the application on 11 May 1991. The defendant requested for further argument in open Court and was scheduled to be heard on 2 April 1992.

However, on 31 March 1992, the defendant gave notice to cross-examine Mr. Anantham, solicitor and Counsel for the plaintiff - Enclosure 103.

As this application has a bearing on the hearing of Enclosure 46, I directed that the application (Enclosure 103) be heard first.

Mr. Rajasingam, learned Counsel for the defendant, relied on one ground only: Mr. Anantham should not have sworn the affidavits, Enclosures 53, 71 and 95 because he was at all material times the plaintiff's solicitor, not the plaintiff. He referred to *Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon* [1989] 1 CLJ 181 and *Seng Huat Hang Sdn. Bhd. v. Chee Seng & Co. Sdn. Bhd.* [1985] 2 CLJ 97. He also referred to O. 41 r. 8 of the Rules of the High Court 1980 which provides:

> 8. No affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any member of the firm of that solicitor.

I did not allow the application. I agree with learned Counsel for the plaintiff that O. 41 r. 8 of the Rules of the High Court 1980 is not relevant.

Secondly, whereas I agree with the views expressed by Shankar J. in *Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon* [1989] 1 CLJ 181 that the practice of solicitors themselves filing contentious affidavits should be discouraged, I am of the view that the fact that it is done, is not a ground for cross-examining the solicitor. I agree with Mr. Anantham's submission that, whether a deponent should be cross-examined or not depends on the content of the affidavit, not on who the deponent is. Furthermore, this application was made too late in the day. It was made **after** this Court had heard the relevant application (Enclosure 46) and just a few days before the hearing of further argument. Indeed it was made $2^1/_2$ years after the application (Enclosure 46) was filed and almost one year after I had given my decision, in chambers, on that application. Two of the affidavits in question (Enclosures 53 and 71) were filed by Mr. Anantham before the hearing of Enclosure 46. They were referred to in the course of the argument before me in chambers. I too had referred to them in coming to my decision. To allow the defendant to cross-examine Mr. Anantham now would amount to allowing the defendant to adduce fresh oral evidence, before the hearing of further argument - see *United Asian Bank Berhad v. Bhassie* [1991] 2 MLJ 122 on whether fresh evidence should be considered at the hearing of a further argument. I do not think that is proper and fair to the plaintiff. The other affidavit filed by Mr. Anantham (Enclosure 95) on 24 January 1992, though subsequent to my decision on Enclosure 46, was filed in opposition to the defendant's **fresh** application (Enclosure 84) to strike out the plaintiff's statement of claim. This application (Enclosure 84) has not been heard yet.

In the circumstances I dismissed the application.

Having disposed of Mr. Rajasingam's application, it was then Mr. Anantham's turn to raise a preliminary objection. He objected to the inclusion of the defendant's affidavit filed on 31 March 1992 (Enclosure 100). It is clear that this affidavit was filed in support of the defendant's application (Enclosure 46) and was filed some

ten months after I had given my decision on that application, but before the hearing of further argument.

Again, Mr. Anantham referred me to *United Asian Bank Berhad v. Bhassie* [1991] 2 MLJ 122.

I agree with the views expressed by the learned Judge that the admission of fresh evidence or new affidavit at the further argument stage is discretionary, and the circumstances in which fresh evidence can be admitted on appeal, i.e. where the evidence could not be obtained with reasonable diligence for use at the trial, where the evidence, if given, would probably have an important influence on the result of the case, and where the evidence must be such as is presumably to be believed, are applicable in admitting fresh evidence at further argument stage.

Learned Counsel for the defendant in an attempt to bring his case within one of the exceptions enumerated in the judgment of that case, said that the evidence could not have been obtained earlier. When asked by the Court to show which one, he could not.

In the circumstances I allowed Mr. Anantham's preliminary objection.

GURDIAL SINGH NIJAR

v.

K S BALAKRISHNAN

MAHKAMAH TINGGI, JOHOR BAHRU
DATO' HJ. MOHD. NOOR BIN
HJ. AHMAD J.
[PETISYEN PILIHANRAYA NO. 1
TAHUN 1990]
23 DECEMBER 1992

ELECTION PETITION: Corrupt practice - Quasi criminal nature - Onus on petitioner - Proof beyond reasonable doubt - Principal and agent - Whether candidate is culpable for actions and words uttered by head of political party's election machinery.

The Petitioner filed a petition to declare the election of the Johor State constituency of Pasir Gudang held on 21 October 1990 invalid on the sole ground that a corrupt practice under s. 32(c) of the Election Offences Act 1954 was alleged to have been committed by the respondent or his agent with his consent and/or knowledge in that on 20 October 1990 at or about 8.40 p.m.until the early hours of the election day, land titles were given to voters in the said constituency at FELDA Cahaya Baru in pursuance to a promise made earlier that day.

Pursuant to a dialogue session held between PW4, the head of the Barisan National election machinery in Tebrau constituency, and Felda settlers, PW4 delivered 191 land titles to the settlers on the evening of 20 October 1990. The respondent was present on both these occasions.

Held:

[1] An allegation of corrupt practice is of a quasi - criminal nature in as much as a finding of corrupt practice entails penal consequences. The onus is on the petitioner to prove corrupt practice beyond reasonable doubt by evidence which is clear, unequivocal and unambiguous.

[2] A corrupt motive must in all cases be strictly proved. For this purpose a corrupt motive in the mind of the person bribed alone is not enough, the question is as to the intention of the person who bribes him.

[3] PW4 could be regarded the agent of the respondent for the purpose of the said